

The Administrative Law Judge found a 45 percent work disability for the period from August 2, 1995, through September 14, 1995. As of September 15, 1995, the benefits were reduced to a functional impairment of 17 percent. The functional impairment was based on the evaluation by a court-appointed independent medical examiner rating claimant's impairment at 22 percent of the whole body, reduced by 5 percent for preexisting disability. Claimant contends she is entitled to temporary total disability from the date of accident, August 2, 1995, to February 12, 1996, when she returned to work.

Claimant also contends the ALJ erred when he deducted a preexisting impairment of 5 percent.

Respondent, on the other hand, contends the award should be limited to 3 percent impairment of function to her left shoulder based on the opinion of Dr. Robert L. Eyster.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board finds the Award should be modified. The Board generally agrees with the findings by the ALJ but it appears there was an error in period of temporary total disability awarded. Claimant is awarded temporary total disability benefits from August 2, 1995, through September 14, 1995, and, thereafter, permanent partial disability benefits for a 17 percent impairment to the whole body. The Board has not awarded a period of work disability because it would not affect the amount of benefits paid as more fully explained below.

#### **Findings of Fact**

1. Claimant has injuries to both upper extremities, including injury to both shoulders, arising out of and in the course of her employment for respondent.
2. Claimant was temporarily totally disabled as a result of these injuries from August 2, 1995, through September 14, 1995. The Board notes respondent stipulated it paid temporary total disability for this 6.29 week period and, in the "Award" section, the ALJ awarded 6.29 weeks of temporary total disability benefits. At the same time, the Award provides for work disability benefits during this period. It appears the Award intended to, and the Board finds, claimant was temporarily totally disabled during this period and is entitled to the temporary total benefits for this period.
3. The Board finds claimant was not temporarily totally disabled from September 15, 1995, to February 12, 1996. The evidence shows that as of September 14, 1995, Dr. Eyster found claimant to be at maximum improvement and released claimant with a permanent impairment rating and permanent restrictions. Dr. Eyster recommended claimant find another job and avoid repetitive overhead work, repetitive pushing or pulling with the upper extremities over 20 pounds, and not engage in repetitive activity of the upper extremities to the point of having increased pain. But claimant believed she was in need of further treatment and was awarded additional treatment. Respondent's accommodation review committee determined claimant could not return to work and put claimant on medical leave. Respondent's counsel stipulated at preliminary hearing that this was because of work-related injuries.

4. Based on the rating of the independent medical examiner, the Board finds claimant has a general body impairment of 22 percent for bilateral injuries to her upper extremities, including injuries to both shoulders.

5. Based on the settlement and evidence presented to support the settlement of claimant's prior claim, the Board finds claimant has a 5 percent preexisting general body impairment based on impairment to her left shoulder. The Board finds this impairment is part of the 22 percent impairment rating by Dr. George G. Fluter.

### **Conclusions of Law**

1. Claimant is entitled to temporary total disability benefits at the rate of \$326 per week from the date of accident, August 2, 1995, through September 14, 1995. K.S.A. 44-510c.

2. Claimant is entitled to permanent partial disability benefits for a 17 percent impairment based on a total impairment of 22 percent less 5 percent preexisting. K.S.A. 44-501 and K.S.A. 44-510e. These permanent disability benefits begin as of September 15, 1995. The Board agrees claimant would be entitled to a work disability during the period September 15, 1995, until she returned to work at a comparable wage on February 12, 1996. K.S.A. 44-510e. But the benefits payable to claimant would be the same as they are with an overall award of 17 percent. The benefits paid during that period of work disability would be at the same weekly rate and then would be deducted from the benefits awarded on the 17 percent disability. Bohanan v. USD 260, Docket No. 110,281 (1995).

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish on August 22, 1997, should be, and the same is hereby, modified.

**WHEREFORE AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Beulah M. Martin, and against the respondent, The Boeing Company, and its insurance carrier, American Manufacturers Mutual Insurance Company, for an accidental injury which occurred August 2, 1995, for 6.29 weeks of temporary total disability compensation at the rate of \$326 per week or \$2,050.54, followed by 70.55 weeks at the rate of \$326 per week or \$22,999.30 for a 17% reduced permanent partial disability, making a total award of \$25,049.84, all of which is presently due and owing.

The Appeals Board also approves and adopts all other orders entered by the Award not inconsistent herewith.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:     Roger A. Riedmiller, Wichita, KS  
       Eric K. Kuhn, Wichita, KS  
       Jon L. Frobish, Administrative Law Judge  
       Philip S. Harness, Director